

NYSBA Guidelines for Effective Advocacy

Introduction

If the New York State Bar Association's advocacy activities are to be effective, we must deliver clear, concise, and coherent "messages" to state and federal public officials based on the general interests of the entire Association. Responsibility for the Association meeting this objective lies with the Association's Department of Governmental Relations (Governmental Relations). Governmental Relations, with lawyers long experienced in legislative advocacy, is at the center of all of our legislative activities, both in Albany and in Washington.

To enable Governmental Relations to carry out its functions, it is essential that sections and committees coordinate all of their legislative activities with Governmental Relations' lawyers. This means that no section or committee should contact or communicate with any local, state or federal official except through or with the guidance of Governmental Relations.

This is important for several reasons. First, the New York State Bar Association is registered with the state as a lobbying organization¹. For this purpose, the Association is one entity, including all of its sections and committees. The Lobbying Act, which applies to us, is quite technical and requires periodic reporting to the Joint Commission on Public Ethics (JCOPE). We must report all contacts with legislators, executive agencies and the Governor's office, including those made by sections and committees. Compliance with the law is of the utmost importance.

Further, the Association is perceived by those with whom we communicate, such as legislators, the Governor, other public officials and the media, as a single organization. Most outsiders do not fully understand the Association's section and committee structure, and as a consequence do not always appreciate the distinction between communications from the Association itself and those from its sections and committees. As a consequence, the Association needs to coordinate all of its legislative activities through Governmental Relations. Sections and committees can and should be engaged in legislative matters, but we must make sure that everything we do in terms of our many and varied legislative activities is beneficial, rather than detrimental, to the entire Association.

Moreover, many of the policy issues of interest to the Association and its sections and committees are within the purview of a limited number of legislators, such as the leaders and the chairs of the Judiciary and Codes committees. The Association has established a good working relationship and regularly interacts with those holding these positions. It is important that sections and committees work with Governmental Relations to navigate the legislative process and ensure that the integrity of these relationships remains intact.

In general, Governmental Relations, working with the leadership, is in the best position to maximize our efforts, marshal the resources available for our legislative work and ensure compliance with the law.

¹ Most of the Association's lobbying activities focus on legislation and the Legislature, but lobbying as defined under state law also covers administrative regulations and most other public officials.

Governmental Relations regularly reports to the Association leadership, which is ultimately responsible for assuring that the Association maximizes its effectiveness, both in Albany and in Washington. Governmental Relations needs to be aware of all of the efforts of our sections and committees to effectively keep the leadership informed.

The following are examples of activity by a section, committee, or individual member that would be problematical:

- Distributing to state or federal public officials any legislative proposal that has not been approved by the Association's Executive Committee and/or House of Delegates;
- Releasing any report, memorandum, op-ed or statement to the public without appropriate notification to and approval by the President; or,
- Independently contacting state or federal public officials to advocate a position on legislation or a proposed administrative regulation.

GUIDELINES

With this in mind, the Executive Committee hereby adopts the following guidelines:

1. **DEVELOPMENT OF NYSBA LEGISLATIVE PROPOSALS** – It is essential that sections and committees communicate with Governmental Relations regarding to issues that they plan to address, as well as their timetable. Governmental Relations will work with the sections and committees in navigating our policy-development process. Any legislative proposal from a section or committee must be submitted to and approved by the Executive Committee and/or the House of Delegates before it can be submitted to the Legislature. Once approved, it becomes a policy of the Association, not the submitting section or committee.
2. **PROMOTING APPROVED NYSBA PROPOSALS** – After a proposal has been approved it becomes a policy of the Association, with advocacy conducted or overseen by the leadership. The section or committee that initiated the proposal should anticipate working with Governmental Relations to assist in its promotion in the Legislature. There cannot be any section or committee activity independent of this process.
3. **SUPPORTING AND OPPOSING NON-NYSBA LEGISLATIVE PROPOSALS**
- Under the Association bylaws, sections and committees may support or oppose proposals pending in the Legislature without obtaining Executive Committee or House approval. However, this authority is not absolute, and is subject to the general supervisory authority of the Executive Committee over sections and committees set forth in the bylaws. Several issues need to be addressed before a section or committee may submit a memorandum or other document in support of or in opposition to a pending proposal or take any other action.

To ensure that the position to be taken does not conflict with a previously adopted policy of the Association, a proposed memorandum must be reviewed by the President. To allow this process to work, any document that a section or committee wishes to issue

supporting, opposing or commenting on a pending proposal must be submitted to Governmental Relations. Under our bylaws, the President has five business days within which to complete the review.

In addition, since the Association's overall legislative efforts need to be coordinated, no one bill or policy can be considered in a vacuum. For example, timing is very important. If we are to be effective, we must make our submissions to the Legislature at the opportune time for maximum impact and they need to be directed to those members who are likely to have a significant role in the outcome. Thus, Governmental Relations, working with the leadership, is in a position to maximize our efforts and marshal the resources available for our legislative work. Prioritizing these efforts must be done centrally.

Another concern is the tone or appropriateness of a legislative memo. Everything we submit to the Legislature affects our relationship with its members and how the Association is viewed. The Association's overall interests require that we submit lawyer-like substantive memos. Memoranda that are personally critical of public officials, inappropriate in tone, or purely political do not present us well. We have the respect of the Legislature because we present substantive, thoughtful arguments. If we lose that respect we will have lost our most precious resource.

4. DELIVERY OF "MESSAGE" – Upon receiving a document that Governmental Relations believes may present the type of issues described above, Governmental Relations shall forthwith submit the document to the President. After consultation with Governmental Relations and the leadership of the section or committee submitting the document, the President may direct that the document be publicly released with such changes as may be agreed upon by the President and such section or committee. If there is not agreement as to such changes, or if the President believes that the document should not be released, the President shall call a meeting of the Executive Committee of the Association by telephone conference as soon thereafter as practicable. At such meeting, the section or committee submitting the document shall be entitled to make a presentation in support of its view. The Executive Committee may decide to amend or withhold the document from public release, or to take such other action as it may determine is in the best interests of the Association. If the actions taken by the Executive Committee are not acceptable to the section or committee submitting the document, such section or committee may elect to withdraw the document from public release by notice to the President. If the President is not available at any time during the process, the President-elect may act on behalf of the President to the extent necessary to avoid undue delay.

5. COMPLIANCE WITH THE LOBBYING LAW – Since the Association is registered to lobby in the State, we are required to periodically report all of our contacts with the Legislature and administrative agencies. These reports are drafted by Governmental Relations. Thus, it is essential that Governmental Relations know of every contact by any member with the Legislature or any other public official if it relates to an Association matter. Consequently, no member may have any legislative contact except through Governmental Relations. There is no other manner of compliance with the law.

Any violation of this requirement puts the Association at risk of a violation and a monetary penalty.

6. GIFTS – As a lobbying organization, we are prohibited from giving a “gift” to any public official. Under the statute, a gift is anything of value, although there are exceptions. The law is quite technical, but the basic rule is not to give any gift, which includes food, drink and entertainment, to any public official. Should an issue arise, Governmental Relations can advise you.

7. SUGGESTIONS FOR SECTIONS AND COMMITTEES -

a. Sections should create a small legislative committee that will provide expertise and continuity from year to year. Involve the section chair in communication on legislative priorities and in coordinating activities. Involve the section chair-elect in order to maintain continuity from year to year.

b. Consider involvement, coordinating with Governmental Relations, in the following areas:

- commenting on pending legislation by issuing memoranda, using the process described above;
- drafting and promoting affirmative legislative proposals;
- meeting with legislators and their staff regarding particular issues;
- analyzing and preparing “white papers” on legislative issues

c. When the Legislature is in recess (generally from July-December), set priorities. Identify major issues and goals for the upcoming legislative session. Part of this issue-identification process is consideration of whether a topic or a particular report produced by the section or committee may be of interest to the news media. Contact Department of Media Services and Governmental Relations to discuss particular issues and reports. Such contact should be early in the process, before release of the final product.

d. Consider asking that a proposal previously approved by the Executive Committee or House of Delegates become an Association legislative priority. Keep in mind that when the Legislature is not in session is the time when the Association conducts its process for identifying legislative priorities for the following legislative session. Requests for priorities are submitted during the summer to Governmental Relations, as the committees that set the priorities meet in the early fall. The Executive Committee usually finalizes the priorities for the upcoming session later in the year.

e. The Legislature is a “political institution” that does not operate by the same model and timetables used by most business or professional institutions. To be effective, recruit members who have had experience with the legislative

process to work with Governmental Relations. In addition, create a mechanism for rapid and effective response at certain times, especially during critical stages of the legislative session. These include the adoption of the budget in late March and end of session in June.

f. As noted, the Association is a registered lobbying organization. You should call Governmental Relations with specific questions about compliance with the Lobbying Act.

Approved by the NYSBA Executive
Committee on Jan. 29, 2015.